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SUBJECT: RENEWED CHALLENGES TO THE INDEPENDENCE OF OHCHR

REF: A. A) 07 GENEVA 2184

[1](#)B. B) 07 GENEVA 2373

Classified By: Charge David Gilmour. Reasons: 1.4 (b/d).

[1](#)1. (C) SUMMARY: Countries seeking to weaken the independence of the UN Office of the High Commissioner for Human Rights (OHCHR) have been stepping up their efforts. They did so most strikingly when High Commissioner for Human Rights Louise Arbour presented OHCHR's new Strategic Management Plan (SMP) to an informal January 28 Human Rights Council session. Egypt, Pakistan, Algeria and Sri Lanka demanded Council oversight of OHCHR's work -- including budgetary matters -- and Council approval of OHCHR decisions on field office locations, and alleged that OHCHR favors civil and political rights over economic, social and cultural ones "in a reflection of the priorities of its donors." This followed the recent issuance of a UN Joint Inspection Unit report, apparently encouraged by some of those countries, recommending greater Council oversight over Arbour's work. Arbour has pledged to retain OHCHR's independence, and we have heard rumors of efforts to press for a new, more controllable High Commissioner. END SUMMARY.

LOOMING THREATS TO OHCHR'S INDEPENDENCE

[1](#)2. (SBU) As we have noted previously (ref a), High Commissioner Arbour has been increasingly concerned by the efforts, led by several countries in the Organization of the Islamic Conference (OIC) and the African Group, to erode OHCHR's independence. Above all, at prior Council sessions, they have reiterated their calls to "clarify" the relationship between the Council and OHCHR. The same message has been implicit in challenges to efforts by OHCHR to open field offices, including a regional office in Cairo (ref b).

STRATEGIC PLANNING DOCUMENT...

[1](#)3. (U) The effort took on a new tone when Arbour hosted the January 28 informal consultation on the High Commissioner's Strategic Management Plan for 2008-09. This is the second SMP produced by OHCHR as a follow-up tool to the 2005 World Summit Plan of Action. OHCHR's total budget for the 2008-09 biennium is \$312.7 million, of which \$115 million would come from the regular UN budget and \$197 million was expected in extra-budgetary contributions. Fifty-eight new posts had been approved for the biennium by the UNGA Fifth Committee, of which 32 were original OHCHR requests, five were transferred from New York to staff the Committee on the Elimination of Discrimination Against Women (CEDAW), five were required by Council decision 3/104 to staff the Council secretariat, and 17 were to staff the new Universal Periodic

14. (U) Arbour noted a positive trend by OHCHR donors towards less earmarking of voluntary contributions, as well as an expansion of the donor base. She also cautioned that the Council had decided to hold two regional Durban PrepComs between January and August of this year, but had made little progress toward that goal. While OHCHR was ready to support this work, the Council would have to prioritize its Durban commitment if OHCHR was going to be able to live up to its obligation.

...ELICITS A NEW ATTACK

15. (U) Members of the OIC and African Group launched quick and negative responses to Arbour's presentation. The first four lengthy statements, from Egypt, Pakistan, Algeria and Sri Lanka, all harshly criticized the way in which the SMP had been elaborated and the substance of OHCHR's work. Egypt (speaking for the African Group) unleashed a litany of complaints, beginning with a demand that the SMP discussion be held in formal Council session as part of a formal consultation with Council members. Egypt complained that the Office's priorities did not reflect those of the Council, particularly the Council's emphasis on racism, and that OHCHR had not changed the name of its Anti-Discrimination Unit to the Racial Discrimination Unit as demanded by the Council. According to Egypt, OHCHR's Rapid Response Unit and its field presence disproportionately focused on Africa; there should be more field operations in developed countries. Egypt also complained that the composition of OHCHR staff was skewed towards the Western and Other Group (WEOG) -- an accusation successfully rebutted by OHCHR later in the session -- and that the office prioritized ESC rights over civil and political ones.

16. (U) Pakistan (speaking for the OIC) continued the harangue, echoing the demand for the Council to review the SMP in a formal session and claiming that the UN Secretary General "explicitly recognized the oversight role of the Human Rights Council in regard to the OHCHR." Pakistan repeated Egypt's complaint that OHCHR pays short shrift to ESC rights. Criticizing OHCHR's creation of a Rapid Response Unit, Pakistan demanded that it be discussed by the HRC before becoming operational. Pakistan claimed that for the past two years, the OIC had asked OHCHR to give technical advice on legislation to combat defamation of religions, and asked the Office to do exploratory work on this theme. In a subtle threat, Pakistan said that the OIC would, "in due course," work with all stakeholders to establish a formal mandate for the Office. Finally, Pakistan said "that all field presences should be specifically authorized" by the HRC. In its follow-on statement, Algeria urged that the review of OHCHR's SMP be made an agenda item at an upcoming Council session.

17. (SBU) Sri Lanka's PermRep focused his remarks exclusively on his country's negative perception of OHCHR and Arbour herself. The PR attacked OHCHR's request for a stand-alone field office in Sri Lanka, claiming that OHCHR was driven to do so at the behest of "a small group of big Western donors." He criticized the High Commissioner for making a statement about Sri Lanka to the press, and complained that the Asia Group had written to the High Commissioner asking that "a certain person" not be appointed to head the Asia-Pacific region at OHCHR headquarters, but had been ignored. (Note: The former head of OHCHR's field presence in Colombo, Rory Mungoven, was appointed head of OHCHR's Asia-Pacific team upon his return to Geneva. Mungoven is an Australian national with a strong reputation. End Note.)

18. (U) Slovenia (speaking for the EU) and several individual EU members, as well as some JUSCANZ members, made statements of support for the High Commissioner and her team, emphasizing the importance of OHCHR's independence. Most

noted that 60/251, referenced by most of OHCHR's critics, did not give the HRC legal authority over OHCHR. Helpfully, Mexican PermRep Luis Alfonso de Alba stressed that his government values OHCHR's presence in Mexico and considers it up to Mexico and OHCHR to discuss bilaterally the work of the office. De Alba, whose former role as President of the Human Rights Council gives him distinct authority, also noted that the confusion on the relationship between the Council and OHCHR was due to the lack of clarity between the mandate of the Council and the General Assembly (Third Committee). De Alba also helpfully underscored that Fifth Committee, not/not the HRC, was in charge of budgeting for OHCHR.

ARBOUR'S RESPONSE

¶9. (U) In her response, Arbour forcefully noted that she could not accept comments by member states on individual staff members' suitability for employment at OHCHR, as recruitment was done in full compliance with UN rules. She reminded delegations that there were other players, such as ACABQ and the UN Comptroller, which affected her office's activities, subtly suggesting that Council demands for oversight of OHCHR were inappropriate. On the limited presence of OHCHR in WEOG countries, Arbour noted that OHCHR has intense interaction with regional human rights mechanisms in Europe, and that she "had ideas about OHCHR's New York office covering the North American region." These ideas, however, would need to be discussed inside the UN Secretariat first. Finally, she noted that African and Latin American nationals were currently over-represented on her staff, while Asians and Eastern Europeans were underrepresented. She promised to provide a full report on staffing in her presentation at the March Council session.

¶10. (C) Though she had kept her cool in the face of the barrage, Arbour had been "stunned" by the vitriolic attacks on her and her office at the SMP presentation, a OHCHR Council Secretariat staffer told us. She saw some of the criticism as personal, and was particularly taken aback because she had heard neither such negative tone nor content when she had previewed the plan in a private meeting with the African Group several weeks ago.

REPORT ADDS FURTHER CONCERNS

¶11. (SBU) Even before the session, concerns about the OHCHR's independence had grown following the issuance of a report by the UN's Geneva-based Joint Investigation Unit late in 2007. In addition to echoing concerns it had made in previous reports on OHCHR, notably about regional hiring imbalances, the new report recommended that the UN General Assembly instruct the High Commissioner to seek the Council's advice and views in preparing the SMP and related budgetary considerations. It also noted that the Council should be but was not involved in preparation of OHCHR budget plans.

¶12. (C) A JIU inspector told us the report played into the hands of those favoring greater Council control of OHCHR, and that they appear to have subtly encouraged the findings of the report, which was co-drafted by the Unit's Peruvian and Senegalese inspectors. Our OHCHR interlocutor noted that although the UNGA, to whom such reports are sent, might disregard the report's contents, an UNGA endorsement of its specific recommendations could become yet another tool for those seeking to rein in OHCHR.

QUESTIONS ABOUT ARBOUR'S TENURE

¶13. (C) We have heard unofficially that the SYG already has approved in principle giving Arbour a one-year extension in her current position, to 2009. Arbour's plans beyond that date remain unclear: according to some rumors in Geneva, she wants to stay on, whereas others claim that her job has worn her out and that she wants to leave. Our OHCHR interlocutor told us that some of those seeking Council control over the

OHCHR see Arbour as a serious hindrance to their intentions and are attempting to convince the SYG to change his mind about her extension.

COMMENT

¶14. (C) OHCHR's independence is among its most pivotal guiding principles. Indeed, several of the countries that blasted away at that body in the recent session concluded by paying lip service to its independence. Nonetheless, those who want Council oversight of OHCHR appear to be moving into a more aggressive phase of their efforts. In so doing, they are deploying the argument that the High Commissioner's independence is part of the West's unfair use of human rights issues to weaken the developing world. They are also casting their effort as leading to the strengthening of the Human Rights Council as an institution, which a number of countries see as a priority in its own right. These arguments will resonate in some circles, creating tough new challenges to those who value an independent OHCHR.

GILMOUR